(3)

(1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH

WRIT PETITION NO. 5147 OF 2005

PETITIONER:

Ishwar Prasad Jaiswal, S/o-Late Shri Reshamlal Jaiswal Aged about 34 years, R/o Village -Gram Panchayat- Devsagar, Block Bilaigarh, Distt- Raipur (C.G.)

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VERSUS

RESPONDENT (S):

1. State of Chhattisgarh
Through it's Secretary
Department of Panchayat
D.K.S. Bhawan Raipur (C.G.)

S.R. No. 53005/05
Presented by Vinay Pandey
dated 7/10/05

2. Chief Executive Officer
Janpad Panchayat Bilaigarh,
Distt. Raipur (C.G)

3. Sarpanch,
Gram Panchayat Devsagar, Block Bilaigarh, Distt- Raipur (C.G.)

11/10/05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS / CERTIORARI ETC. OR DIRECTION / ORDER IN THE LIKE NATURE.

(10)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 5147/2005

PETITIONER — Ishwar Prasad Jaiswal

Versus

RESPONDENTS

1. State of Chhattisgarh through it's Secretary, Department of Panchayat, D.K.S. Bhawan, Raipur - (C.G.)
2. Chief Executive Officer, Janpad Panchayat Bilaigarh, District Raipur –(C.G.)
3. Sarpanch, Gram Panchayat Devsagar, Block- Bilaigarh, District Raipur (C.G.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present : Shri Vinay Pandey, counsel for petitioner.
Ms. Anju Ahuja, Dy. Govt. Advocate for the State/respondent No. 1.
Shri Sandeep Dubey, counsel for respondents No. 2 & 3.

ORAL ORDER

(Passed on 20th day December, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

Learned counsel for the petitioner submits that the petitioner was appointed as Panchayat Karmi at Gram Panchayat Dev Sagar, District Raipur by order dated 29.1.1996 (Annexure P-1). The petitioner was further appointed as Panchayat Secretary in accordance with provisions of Section 69 of Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the 'Adhiniyam, 1993'). On 24.8.2005, the petitioner was served a show cause notice (Annexure P-2). The petitioner submitted his reply to the said show cause notice on 5.9.2005 (Annexure P-4). The petitioner has sent one more reply to the show cause notice dated 24.8.2005 on 25.8.2005 (Annexure P-3). The petitioner was removed from the post of Panchayat Karmi by the impugned order dated 2.10.2005 (Annexure P-5) without affording any opportunity of hearing, in violation of Rule 7 of the Panchayat Service (Discipline & Appeal) Rules, 1999 (in short

(41)

Rules, 1999). Learned counsel further submits that Rule 7 of the Rules, 1999 provides for an appropriate formal enquiry after framing definite charge on the basis of allegations along with the statement of allegations requiring him to submit a written statement of defence within such a time prescribed by the authority. Learned counsel also submits that the impugned order has been passed in violation of the procedure prescribed under Rule 7 of the Rules, 1999 for imposing major penalty i.e. dismissal from service as are prescribed under Rule 5(b)(vii) of the Rules 1999.

2. Shri Sandeep Dubey, learned counsel appearing for respondents 2 & 3 and Ms. Anju Ahuja, Dy, Govt. Advocate for respondent No. 1 fairly submitted that it is true that a show cause notice was issued and the petitioner has filed his reply thereto, but no proper procedure as envisaged in Rule 7 of Rules, 1999 was followed before the impugned order of dismissal from service was passed.

3. I have heard learned counsel for the parties and perused all the documents appended to the writ petition as well as to the return filed by the respondents. This is a case where admittedly there is a gross violation of the principles of natural justice and statutory provisions of the Rules, 1999. The show cause notice was issued to the petitioner and the petitioner had also filed reply thereto, but no enquiry was conducted to find out facts, as alleged in the show cause notice. There are serious allegations in the charge-sheet which remained unsubstantiated and proved, as no enquiry was held.

4. So far as availability of alternative remedy is concerned, it is rule of discretion, not of law. In the facts and circumstances of the present case, wherein there is clear violation of statutory provisions of Rule 7 of the Rules, 1999, it is not necessary to dismiss this petition on the ground of availability of alternative remedy.

5. Learned counsel for the petitioner with regard to the back wages submits that the petitioner was not gainfully employed elsewhere and this

petition has been filed immediately on 7.10.2005. The petitioner has been restrained from working and was deprived salary thereof by illegal conduct of the respondents. The petitioner is entitled to 100% back wages. Per contra, learned counsel for respondents submit that the petitioner is not entitled to any back wages on the principle of 'no work no pay'. Admittedly, the service of the petitioner was terminated without following the principles of natural justice and also without following the statutory provisions of the Rules, 1999. The petitioner was restrained by the conduct of the respondents from working in service. Thus, the principle of 'no work no pay' will not be applicable. In the facts of the case, the petitioner is entitled to 50% back wages.

6. For the reasons stated above, the impugned order/resolution dated 2.10.2005 (Annexure P-5) is quashed and set aside. The petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Kvr